

**SENATE COMMITTEE ON ELECTIONS
AND CONSTITUTIONAL AMENDMENTS
Senator Lou Correa, Chair**

BILL NO: **AB 1413**
AUTHOR: **FONG**
AMENDED: **1/5/12**
FISCAL: **YES**

HEARING DATE: **1/10/12**
ANALYSIS BY: **Darren Chesin**

SUBJECT

Elections: "top two" primary election

DESCRIPTION

EXISTING LAW:

1. Requires that primary elections for Congress and for state elective office, other than Superintendent of Public Instruction (SPI), be conducted in a manner such that every voter, regardless of party affiliation, may vote for any candidate for that office without regard to the political party of the candidate, provided that the voter is otherwise eligible to vote for that office.
2. Provides that the two candidates that receive the highest number of votes at a primary election for Congress or for state elective office other than SPI, regardless of political affiliation, move on to the general election.
3. Allows any candidate for congressional or state elective office, except a candidate for SPI, to choose to have his or her political party preference, or lack of party preference, indicated on the ballot.
4. Permits a voter to declare a party preference when he or she registers to vote. Requires that the option for a voter to choose "No Party Preference" be placed at the beginning of the listing of qualified political parties on the voter registration card.
5. Defines the term "voter-nominated office" to include all congressional and state elective offices, except for SPI.
6. Prohibits write-in votes from being counted at the general election for a voter-nominated office.

This bill makes numerous substantive and technical changes to state election law to implement the top two primary election system. Specifically, this bill provides for all of the following:

1. Conforms the procedure for presidential electors to be chosen by the Democratic Party to the top two primary system, by providing that the

Democratic candidate who receives the most votes in the primary election for Congress and for US Senate each choose a presidential elector, rather than having the Democratic nominees for Congress and US Senate choosing presidential electors.

2. Requires that the option for a voter to decline to state a party affiliation be placed at the end of the listing of qualified political parties on the voter registration card. Permits the Secretary of State (SOS) to continue to supply existing voter registration cards prior to printing new or revised forms that reflect this change.
3. Permits candidate filing to reopen if any candidate for voter-nominated office dies between the deadline for filing for office and the 83rd day prior to the election, instead of allowing candidate filing to reopen only in the circumstance where there is only one candidate who has filed, and that candidate dies. Repeals obsolete language regarding filing reopening for partisan nomination at the primary election.
4. Modifies the format of the declaration of candidacy and nomination papers to conform to the top two primary system. Requires a candidate for voter-nominated office to include a certification of his or her partisan affiliation history for the previous 10 years on the nomination papers that he or she files.
5. Provides that if a candidate for voter-nominated office dies prior to the primary election, and that candidate receives a sufficient number of votes to entitle him or her to appear on the ballot at the general election if he or she had lived until after the election, the name of that deceased candidate shall appear on the ballot at the general election.
6. Provides that if a candidate for voter-nominated office who is entitled to appear on the general election ballot dies, the name of that candidate nonetheless shall appear on the general election ballot.
7. Provides that if a candidate for voter-nominated office who is deceased receives a majority of votes cast for the office at the general election, a vacancy shall exist in the office to which he or she was elected. Provides that this vacancy shall be filled in the same manner as if the candidate had died subsequent to taking office.
8. Requires an explanation of the electoral procedure for voter-nominated office to be included in the voter information portion of the sample ballot at any special election held to fill a vacancy in the Legislature or in Congress.
9. Modifies the manner in which the party preference designation for a candidate for voter-nominated office will appear on the ballot, pursuant to the following:
 - Provides that if the candidate has a political party preference the preference shall appear in the following manner: "Party Preference: _____ (name of the qualified political party as disclosed upon the candidate's affidavit of registration)."

- Provides that if the candidate has declined to disclose a political party preference on his or her affidavit of registration, the designation shall appear in the following manner: "Party Preference: None."

10. Provides flexibility to counties in the placement on the ballot of the party affiliation of Presidential candidates.
11. Eliminates certain type-size and typeface requirements for instructions that must be printed on the ballot. Clarifies and shortens the instructions that appear on the ballot.
12. Provides that spaces for write-in candidates will not be printed on the ballot for voter-nominated offices at the general election.
13. Makes various technical and non-substantive changes and contains an urgency clause.

BACKGROUND

Top Two Primary & Ballot Formatting Issues: In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010 Statewide Primary Election Ballot. Proposition 14 implemented a "top two" primary election system in California for most elective state and federal offices. At primary elections, voters are able to vote for any candidate, regardless of party, and the two candidates who receive the most votes, regardless of party, advance to the general election.

At the same time that it passed SCA 4, the Legislature also approved and the Governor signed SB 6 (Maldonado), Chapter 1, Statutes of 2009. SB 6 made various changes to state statute that became effective upon the approval of Proposition 14 by the voters. While many of the changes to state law made by SB 6 were merely conforming changes to provide for a "top two" primary system, some of the changes were more substantive. For instance, for offices that are subject to the top two primary, SB 6 prohibited write-in votes from being counted at the November general election and required independent candidates to appear on the ballot at the primary election (under the law prior to the adoption of SB 6, independent candidates only appeared on the ballot at the general election). Additionally, SB 6 required the state voter registration form to be redesigned and required certain new information to be printed on the ballot at elections for state and federal office.

In March 2010, the Assembly Elections and Redistricting Committee held an oversight hearing on the impacts of the top two primary election system and SB 6 on election costs and administration. Among other testimony, the committee heard from elections officials who indicated that certain aspects of SB 6 could significantly increase the length of ballots at primary elections, thus increasing election costs. Specifically, elections officials expressed concern with the format in which a candidate's party preference was to appear on the ballot, with the length of language that will be printed on the ballot to explain the top two primary process, and with certain type size and typeface requirements for language that must be included on the ballot.

This bill makes various modifications to the language that will appear on the ballot to address these formatting concerns. This bill shortens the format in which a candidate's party preference is displayed on the ballot, shortens and clarifies the ballot instructions that appear on the ballot, and eliminates certain type size and typeface requirements to give county elections officials greater flexibility to format their ballots. These changes should help address some of the concerns raised by elections officials.

Death of a Candidate: Under the provisions of SB 6, if a candidate for voter-nominated office at the general election dies, depending on when that candidate dies, he or she may be replaced on the ballot by the next highest vote-getter from the primary election. This could lead to some unusual, and potentially undesirable, situations. For instance, in a district where voters strongly prefer one political party, if that party's only candidate dies, he or she could be replaced on the ballot by a candidate from a different political party. This, combined with the fact that write-in votes are prohibited at the general election for voter nominated offices, could result in voters being left to choose between two candidates who are unrepresentative of the policy preferences of the vast majority of voters in the district. Similarly, if a number of candidates chose not to run for an office because a popular incumbent was running for re-election, and that incumbent subsequently died, voters could be forced to choose from a pool of lesser-qualified candidates.

In fact, state law already recognizes the potential for such a situation in races for non-partisan office, and provides a mechanism to protect against this type of situation. In certain circumstances, when an incumbent candidate for non-partisan office dies before the election, state law provides for the election to be canceled and a special election to be held at a future date.

This bill would provide that when a candidate for voter nominated office dies, the name of that candidate will nonetheless remain on the ballot. If the deceased candidate is one of the top two vote getters at the primary election, the name of that deceased candidate will also appear on the ballot at the general election. If the deceased candidate prevails at a general election, there will be a vacancy in the office that is filled in the same manner as if the vacancy had occurred after the candidate had taken office.

Write-In Candidates: One of the provisions of SB 6 prohibited write-in votes from being counted at a general election for a voter-nominated office. Other provisions of law that require that write-in spaces appear on the ballot, however, were unaffected. This could create confusion, and could mislead voters into thinking that write-in votes for candidates for voter-nominated office at a general election will be counted. This bill eliminates write-in spaces on the ballot for voter-nominated offices at the general election in order to avoid this confusion consistent with the California First Court of Appeals decision on September 19, 2011 in Field v. Bowen.

COMMENTS

1. According to the author, in 2009, as part of a budget deal, a measure was placed on the ballot for the voters to consider authorizing a "top two" primary election system. At the same time that measure was approved, the Legislature also approved a series of changes to the Elections Code to implement a top two primary election system.

Unfortunately, due to the nature in which those statutory changes were adopted, they created a number of problems for the effective and efficient operation of elections. Last session, the Assembly Elections and Redistricting Committee held an oversight hearing to hear from elections officials about some of the problems with those statutory changes. Among other problems, county elections officials testified that certain ballot printing requirements created an unnecessary burden, and could significantly increase election costs.

Since that time, state and county elections officials have been working diligently to develop fixes that will help implement the top two primary system in a more effective manner. This bill reflects much of that work, and makes a number of technical and substantive changes to assist elections officials in carrying out their responsibilities. In addition, this bill addresses a few other substantive and technical issues with the implementation of the top two primary election system.

2. Prior Version: The prior version of this bill, which was approved by the Assembly, made various minor and technical changes to the Political Reform Act. Those provisions were removed from this bill in the Senate, and the current contents were added. As a result, this bill has been re-referred to this committee pursuant to Senate Rule 29.10.

PRIOR ACTION

Assembly Elections and Redistricting Committee:	7-0
Assembly Appropriations Committee:	16-0
Assembly Floor:	78-0
Senate E&CA Committee:	5-0

(Note: these votes do not reflect the current version of this bill.)

POSITIONS

Sponsor: Author

Support: California Association of Clerks and Election Officials
Californians to Defend an Open Primary
Secretary of State

Oppose: Asian American Action Fund
Coalition for Free & Open Elections (COFOE)